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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CM(M) 993/2023**

LAYAK RAM & ANR.

..... Petitioners

Through: Ms. Mumtaz Ahmad & Ms. Bhawana
Sharma, Advs.

versus

SHAMA PARVEEN

..... Respondent

Through: Ms. Kunwar Arish Ali, Mr.
Mushfique Raja, Ms. Yamin, Mr.
Zubair Ali & Mr. Yasser Wali, Advs.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

08.05.2024

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1. The present petition under Article 227 of the Constitution of India, 1950 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') has been filed impugning the order dated 17.05.2023 passed by the learned District Judge, Commercial Court, North-East, Karkardooma Courts, Delhi (hereinafter referred to as 'Trial Court'), in CS No.58/2021 titled as "*Shama Praveen vs. Layak Ram & Anr.*", whereby the learned Trial Court dismissed the application for condonation of delay in filing the list of witnesses filed under Section 5 of the Limitation Act read with Section 151 CPC moved by the petitioners herein.

2. Learned counsel submits that respondent herein had filed a civil suit before the learned Trial Court and summons of which were received on 16.03.2023 by the petitioners. The suit has been contested by the petitioners and thereafter, the written statement was filed. On 09.01.2023, the issues



were framed by the learned Trial Court and the evidence of the petitioners was closed vide order dated 17.05.2023. Thereafter, the petitioner examined two witnesses i.e. defendant no.1 Shri Layak Ram and defendant no.2 Shri Sanjay. On the said date of hearing, it came to the notice that list of witnesses was not filed by the petitioners, therefore, an endeavour was made to place the list of witnesses on record along with an application under Section 5 of the Limitation Act by the petitioners seeking condonation of delay in filing the list of witnesses. However, the learned Trial Court dismissed the application and closed the evidence of the petitioners.

3. Learned counsel for the petitioners submits that two witnesses to be examined on their behalf namely Shri Dhirender and Shri Narender are material witnesses and fact of which has been mentioned in the written statement filed on behalf of the petitioners. It is submitted that learned Trial Court did not consider the reasons for delay in filing the list of witnesses and has erroneously closed the opportunity of the petitioners to call further witnesses in defence.

4. The submissions have been controverted on behalf of the respondents stating that the relevancy of both the witnesses have not been stated on behalf of the respondent. The mere reason for summoning the witnesses which are completely irrelevant to the issue in hand. It is also submitted that the learned Trial Court had granted sufficient opportunity to the petitioners to summon and examine all the witnesses but since they have been failed to do so. Thus, the learned Trial Court has correctly dismissed the application of the petitioners which does not require any interference.

5. Learned counsel on behalf of the petitioners had filed the list of witnesses before the court on 17.05.2023 along with an application seeking



condonation of delay in filing the list of witnesses which has finally been dismissed by the learned Trial Court.

6. Submissions heard, impugned order passed by learned Trial Court and the record perused.

7. In paragraph no. 2 of the preliminary objections of the written statement filed on behalf of the petitioners, it has been specifically mentioned that respondent had taken friendly loan of Rs.5,00,000/- from the petitioners and gave Rs.2,75,000/- on 08.04.2017 and the remaining amount of Rs.2,25,000/- on 10.08.2017 in the presence of two persons, namely, Shri Dhirender and Shri Narender. Learned counsel has submitted that both the witnesses i.e. Dhirender and Narender are relevant witnesses as the petitioners wants to prove that amount of Rs.2,25,000/- was given in the presence of both the persons on 10.08.2017 to the respondent, therefore their examination as a witnesses be permitted.

8. Having considered the above, only one opportunity is granted to the petitioners to summon two witnesses namely Shri Dhirender and Shri Narender and to conclude their entire defence evidence on the same day i.e., on the next date of hearing i.e., 04.07.2024 or any other date which is convenient to the learned Trial Court according to its board, subject to cost of Rs.10,000/- to be paid to the respondent on the next date of hearing fixed before it.

9. Accordingly, the impugned order dated 17.05.2023 is set aside. Consequently, the petition stands disposed of.

SHALINDER KAUR, J.

MAY 08, 2024/ab